IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:::

ORDER

Bhawani Singh
Vs.
Labour Court, Jodhpur & Ors.

S.B. CIVIL WRIT PETITION NO.6448/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 22nd December, 2006

PRESENT

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Vijay Mehta, Advocate, for the petitioner.
Mr. Rameshwar Dave, Dy. Government Advocate, for the respondents.

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BY THE COURT:

The petitioner has challenged the award passed by the learned labour court dated 5th Jun, 2003 whereby it held that the petitioner could not prove that he worked with PHED, Merta, District Nagaur or Asstt. Engineer, PHED, Nava and therefore he was not entitled to any relief.

Shri Vijay Mehta, learned counsel for the petitioner argued that the learned labour court, Jodhpur failed to correctly appreciate the evidence on record and erred in law while holding hat the petitioner worked only for 204 days and did not work for Feb., March, August and Sept., 1993. According to him, there was no occasion for the petitioner for working in those months because his services were terminated on 30.6.1993. Learned counsel for the petitioner argued that weekly and gazetted holidays are allowed even for the daily wages employees and therefore the petitioner having worked for 26 days in every month, he had completed 234 days. Number of holidays being added thereto, his working would far exceed requisite 240 days. The award passed by the learned labour court is therefore vitiated on the count of non application of mind and for recording erroneous finding of facts. The award is therefore liable to be set aside and writ petition may kindly be allowed.

Shri Rameshwar Dave, learned Dy. Government Advocate argued that the petitioner was engaged only on daily wage

basis on 1.4.1992 on water supply scheme, which was an urgent and emergent work. The petitioner then left the said work therefore this case cannot be considered as a case of retrenchment. He was engaged in that scheme from 1.4.1992 to 31.7.1992, 1.10.1992 to 31.1.1993 and finally from 1.4.1993 to 30.4.1993. He therefore did not complete 240 days in a calender year immediately preceding the date of retrenchment. It was therefore argued that writ petition be dismissed.

I have considered the arguments as advanced by learned counsel for the parties and also examined the award and other material on record. A perusal of the affidavit of Shri Ghanshyam Garg, Asstt. Engineer, PHED,Nava filed before the learned court in para no.3 clearly reveals that the workman had worked for how many days, which runs as under: -

"4/92 to 7/92	26 days in each months
8/92 to 9/92	not worked
10/92 to 12/92	26,26 & 22 days in each months
1/93	26 days
2/93, 3/93	Not worked
4/93	26 days"

It would be evident from the days that even if in relation to those months in which, the petitioner has worked for 26 days four holidays are added for each of the month, total number of 204 days would be increased only of 28 days, which would come to only 232 days. In the face of the evidence adduced by the management, it was for the petitioner to lead evidence that he actually worked for 240 days. In the absence of any evidence, it cannot be said that the award passed by the learned labour court suffers from any infirmity so as to call for any interference by this Court.

In the result, the writ petition having no merit is hereby dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-